

NORTH CAROLINA

INCENTIVE AGREEMENT

CHATHAM COUNTY

THIS INCENTIVE AGREEMENT (this “Agreement”) made and entered into this ____ day of _____, 2019 (the “**Effective Date**”) by and between **CHATHAM COUNTY**, a body politic and corporate of the State of North Carolina (the “**County**”) and **GILERO, LLC dba EG-GILERO**, a North Carolina Limited Liability Company, with a mailing address of PNC Plaza, 301 Fayetteville Street, 15th Floor, Raleigh, North Carolina 27601 (the “**Company**”).

RECITALS:

WHEREAS, the Company has purchased a vacant industrial building located at 158 Credle Street in Pittsboro, North Carolina (the “**Facility**”) which has a current tax value of \$779,308 (the “**Beginning Tax Value**”); and

WHEREAS, the Company intends to manufacture medical devices in the Facility (the “**Facility Function**”); and

WHEREAS, the Company has stated that it will invest an amount, including the purchase price, estimated at \$3,900,000 to upgrade the Facility to enable the Company to perform the Facility Function (collectively, the “**Investment**”); and

WHEREAS, in connection with the Investment, the Company has stated that it will add at least sixty (60) new, full-time equivalent employees at the Facility; and

WHEREAS, with respect to the Facility, the Company has stated that the average Annual Wage (as defined in Section 3) for all Facility Employees will be at least \$35,769; and

WHEREAS, the County has adopted an Economic Development Incentive Policy (the “**Policy**”), the terms of which Policy are incorporated herein by reference, to provide economic development incentive grants to new and expanding businesses and industries within the County pursuant to authority granted by Section 158-7.1 of the North Carolina General Statutes (“**Section 158**”); and

WHEREAS, the amount of the incentive grant under the Policy is generally determined by the number of jobs created and retained (quantity and wages), capital investment, environmental impact, and industry cluster/business type, and other criteria so long as the incentive is consistent with Section 158, on a case-by-case basis in the discretion of the Board of Commissioners of the County (the “**Board of Commissioners**”); and

WHEREAS, on the 18th day of February 2019, after providing due notice as required by and in accordance with applicable law, the Board of Commissioners held a public hearing at its regularly scheduled February meeting (the “**Public Meeting**”), at which Public Meeting the economic development incentives hereinafter described (the “**Incentives**”) were presented to the Board of Commissioners and the general public for, as applicable, consideration, comment and approval; and

WHEREAS, the Board of Commissioners found that the Investment would (i) expand and/or protect the property tax base in the County and (ii) create and protect jobs in the County and, pursuant to the foregoing findings and the above-referenced authority conferred on the Board of Commissioners pursuant to Section 158, the Board of Commissioners has concluded that it is in the best interest of the County and its residents to grant the Incentives and to make the payments associated with such Incentives (“**Incentive Payment**”) on the terms and conditions of this Agreement; and

WHEREAS, the Company has stated the Company will make the Investment only if the County will grant the Incentives on the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the premises, the foregoing recitals and the mutual covenants, promises, and obligations contained herein, the sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Company Investment in the Facility.** The Company shall operate its business in the Facility at the 158 Credle Street address during the Term (as defined in Section 6 hereof). The Company shall make upgrades and improvements to the Facility that will increase its current assessed Chatham County tax value on or before the 1st day of January, 2020, it being the stated intention of the Company to invest approximately \$3,900,000 in the purchase and renovation of the Facility.

2. **Creation of Jobs at the Facility.** On or before the 31st day of December, 2022, the Company shall have created, and agrees to maintain during the Term, not fewer than sixty (60) Facility Jobs (collectively, all jobs required to be created or retained as set forth in Section 2 and Section 3 hereof, “**Total Facility Jobs**”)

3. **Annual Average Wage.** During the Term, the Company shall pay annual average cash wage (including regular and overtime pay, vacation and holiday pay, year-end bonuses, and comparable employee pay incentives, but excluding non-cash benefits such as insurance or retirement contributions) (an “**Annual Wage**”) of at least \$35,769 Employee per Year (hereinafter defined) (such amount, the **Annual Average Wage**”).

4. **Company Certifications.** On or before the first (1st) day of February of each year during the Term, the Company shall certify to the County for the year just ended, on a form satisfactory to the County and separate from the certification required by Section 5 hereof, (i) the total number of Facility Jobs as of the end of each quarter of the year just completed and (ii) the average Annual Wages paid to Employees during such year. The certification shall include, with respect to the Facility, true copies of the Company’s Quarterly Tax and Wage Report for the year just completed filed with the North Carolina Employment Security Commission with an indication thereon of the persons who were employed at the Facility during such quarter. The first certification shall be due on or before the February 1st, 2020 and shall cover the period from the Effective Date to December 31, 2019, and each subsequent certification shall cover the year just ended.

5. **County Incentives Payments.** Provided the Company has met all the requirements of this Agreement, the County, subject to the terms hereof, shall make the following Incentive Payments based on the amount of Chatham County real and personal property taxes (excluding fire district taxes

and any other taxes, fees, charges, or payments, except Chatham County real and personal property taxes) actually and timely paid by the Company calculated on the increase in the tax value of the Facility above its Beginning Tax Value (the “**Incentive Property Taxes**”) within thirty (30) days of the County’s receipt of satisfactory certifications pursuant to Section 5:

<u>Year</u>	<u>Amount of Incentive Payment</u>
2019 (“ Year One ”)	70% of the Incentive Property Taxes paid to the County by the Company on or before December 31, 2019
2020 (“ Year Two ”)	60% of the Incentive Property Taxes paid to the County by the Company on or before December 31, 2020
2021 (“ Year Three ”)	50% of the Incentive Property Taxes paid to the County by the Company on or before December 31, 2021
2022 (“ Year Four ”)	30% of the Incentive Property Taxes paid to the County by the Company on or before December 31, 2022
2023 (“ Year Five ”)	20% of the Incentive Property Taxes paid to the County by the Company on or before December 31, 2023

Notwithstanding the foregoing, an Incentive Payment to be made with respect to any Year will be proportionally reduced in the manner set forth below upon the occurrence of any one or more of the following events: (i) the Company fails to meet or exceed the required number of Total Facility Jobs pursuant to Section 2; For the purpose of calculating the aforementioned proportional reduction of an Incentive Payment, if any, the County shall: (i) calculate the average number for such year of Total Facility Jobs, as applicable, as reflected on the applicable Quarterly Tax and Wage Reports for such Fiscal Year (the “**Average Number of Employees**”) and (ii) divide the resulting Average Number of Employees by Total Facility Jobs, as applicable (such result, the “**Quotient**”). In the event the Quotient is less than one (1), the Quotient shall be multiplied by the amount of the Incentive Payment to be received for the Fiscal Year in question (prior to any reduction pursuant to this paragraph) (such result, the “**Product**”), and the Product, expressed in U.S. currency, shall be the amount of the Incentive Payment for such Year; provided, however, with respect to any Year where the Quotient for the, as the case may be, is less than point six (0.6), no Incentive Payment shall be made with respect to the Facility. Provided, further, no incentive payment shall be made with regard to the Facility for any year in which the Average Annual Wage is less than \$35,769.

6. **Term and Termination.** The Term shall commence on the Effective Date and shall continue until the *earlier* of: (i) December 31, 2023, (ii) the date all Incentive payments have been made by the County, or (iii) the termination of this Agreement pursuant to other applicable terms of this

Agreement (such date, the “**Termination Date**”). In no event shall the County’s obligation to make any Incentive Payments otherwise arising after the Termination Date survive the termination of this Agreement. Either party may terminate this Agreement upon the material breach or the occurrence of an event of default of the other party hereto of any of the obligations of this Agreement if such breach is not cured within thirty (30) days (such thirty (30) day period, the “**Cure Period**”) following written notice from the non-breaching party to the breaching party detailing such breach of this Agreement (such notice, a “**Breach Notice**”; such uncured material breach or event of default, an “**Event of Default**”). During any Cure Period arising from the County’s delivery of a Breach Notice to the Company, the County may suspend or withhold, in its sole discretion, any Incentive Payments to be made during such Cure Period; provided, however, if this Agreement is not terminated following the delivery of a Breach Notice by the County to the Company and the breach alleged therein is either cured or waived by the County, any Incentive Payments withheld during such Cure Period shall be promptly paid by the County subject to the conditions of waiver, if any, which the County may require.

7. **Repayment of Payment Incentives.** During the Term and without limiting the County’s right to declare an Event of Default upon the Company’s material breach of other provisions of this Agreement, the events set forth in subsections (a) through (d) below shall constitute, if uncured as set forth in Section 6 hereof, an Event of Default giving rise to the County’s right to terminate this Agreement *and* to require the Company to repay all Incentive Payments previously made pursuant to this Agreement within thirty (30) days of the Company’s receipt of written notice from the County. This Section 7 shall expressly survive the termination of this Agreement. Accordingly, if the County determines, within the applicable statute of limitations period, that facts giving rise to an Event of Default by the Company occurred before the Termination Date, the Company, notwithstanding this Agreement having been terminated, shall repay all Incentive Payments previously made pursuant to this Agreement within thirty (30) days of the Company’s receipt of written notice from the County:

Events of Default

(a) **Cessation of the Facility Function.** As of the date and at all times following the complete cessation of the Facility Function (such date, the “**Cessation Date**”; such event, a “**Cessation Event**”).

(b) **Relocation of Facility Function.** As of the date (a “**Relocation Date**”) the Company (i) commences to move or relocate the Facility Function to a location or locations outside of Chatham County, North Carolina and/or (ii) commences to move or relocate some, but not all, of the Facility Function to a location or locations outside of Chatham County, North Carolina and, as a result of such move or relocation, the Company is unable to maintain or retain the Facility Jobs as required by Section 2 and Section 3 (any such event, a “**Relocation Event**”).

(c) **Inadequate Numbers of Facility Jobs.** The Calculation to be performed by the County pursuant to Section 5 hereof results in a Product that is less than point six (0.6) during any two (2) consecutive Fiscal Years.

(d) Inadequate Annual Wages at the Facility. The Average Wage paid to Processing Facility Employees during a Calendar Year is ninety percent (90%) or less of the amount that is the Annual Average Wage (Processing Facility) for two (2) consecutive Calendar Years.

(e) Payment of Taxes. The Company fails to (i) timely list or (ii) pay in full all ad valorem taxes due and owing to the County and/or any other applicable local governmental entity before they are delinquent, unless such taxes are being challenged (subject to the provisions of Section 8) in good faith and for which adequate reserves have been established.

(f) Other Events of Default.

(i) A default by the Company under any mortgage, deed of trust, security agreement, financing lease, or other such obligation covering the Facility or any personal property of the Company located in the Facility that is uncured in accordance with the terms of such document, or following the Company's filing a petition in bankruptcy, seeking the appointment of a receiver, or any other debtor relief, or the filing against the Company of a petition in bankruptcy or seeking the appointment of a receiver or other creditor relief and such petition is not dismissed within sixty (60) days following the filing thereof, or the appointment of a receiver for the Company's property.

(ii) The conclusive determination by a court of competent jurisdiction that the representations made by the Company herein and during the performance of this Agreement constitute fraud or other intentional misrepresentation.

8. Tax Challenges. The Company retains its statutory rights to challenge or appeal the ad valorem real and personal property tax values established by the County including a discovery proceeding (collectively "**Tax Challenge**") for the Company's property; provided, however, no incentives shall be payable under this Agreement with respect to any year for which a Tax Challenge has been made and is pending until a final, non-appealable decision has been made with respect to the Tax Challenge. In the event a Tax Challenge results in a refund of any taxes being due to the Company for a prior year in which incentives have been paid, the amount of the refund shall be reduced by the amount of incentives paid for the year in question.

9. County's Right of Inspection. The Company agrees that any duly authorized representative of the County shall, upon reasonable notice to Company, have access to and the right to reasonably inspect, copy, audit, and examine all of the books, records, and other documents relating to the fulfillment of this Agreement during the Term.

10. Refund of Incentives. The Company may, at any time during the Term, refund the entire amount of the Incentives paid to the Company pursuant to this Agreement ("**Refund Date**"), plus an amount that is three percent (3%) of the total amount of such amount refunded (the "**Administrative Fee**"), which Administrative Fee shall be reimbursement for costs the County incurred in connection with the relationship memorialized hereunder. As of the Refund Date, this Agreement shall terminate.

11. No Pledge of Faith and Credit of County. No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of the County within the meaning of any constitutional debt limitation. No provision of this Agreement shall be construed or interpreted as

delegating governmental power or as a donation or a lending of the credit of the County within the meaning of the North Carolina Constitution. This Agreement shall not directly or indirectly or contingently obligate the County to make any payments beyond those appropriated in the County's sole discretion for any fiscal year in which this Agreement shall be in effect. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the County's moneys, nor properties, nor shall any provision of the Agreement restrict to any extent prohibited by law, any action or right of action on the part of any future County governing body. To the extent of any conflict between this Section 11 and any other Section of this Agreement, this Section 11 shall control.

12. **Company to Bear Risk.** The Company shall be entirely responsible for, and shall bear all risk of loss associated with its use of the funds paid by the County hereunder. Further, in the event that the Incentives provided for herein, or any portion thereof, is found by a court of competent jurisdiction to be *ultra vires* or not authorized by the laws or Constitution of the State of North Carolina, this Agreement shall be deemed immediately terminated, and the Company shall promptly refund the entire amount of any Incentive Payments previously made. This Section 12 shall survive the expiration or termination of this Agreement.

13. **Representations and Warranties.** The Company represents and warrants to the County that the Company will comply with all applicable local, State, and Federal laws in carrying out the obligations incurred by the Company under this Agreement and in its operations generally and shall be bound by the terms of the Policy, except to the extent the same have been expressly modified herein. Without limiting the generality of the foregoing, the Company represents and warrants that it is duly organized and in existence and has the corporate power and authority to bind itself to the requirements of this Agreement and to perform its obligations hereunder, that the execution and delivery of this Agreement have been approved in accordance with its organizational documents, and that it is duly qualified to conduct business in the State of North Carolina.

14. **Indemnity.** The Company hereby agrees to indemnify, protect, and save the County, its elected and appointed officials, employees, and agents harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorney's fees and costs of litigation, arising out of, connected with, or resulting from, directly or indirectly, the Facility and/or the transactions contemplated by or relating to this Agreement, including without limitation, the payment of Incentives, and the possession, condition, improvement, or use of the Facility. The indemnification arising under this Section 14 shall survive the Agreement's termination.

15. **Notices.** Any written notice or written certification or payment required by the terms of this Agreement shall be deemed given if delivered in person, or mailed certified mail, return receipt requested to the person named below:

To the County:

Chatham County
Post Office Box 1809
Pittsboro, North Carolina 27312
Attn.: Interim County Manager

To the Company:

Gilero, LLC dba EG-Gilero
PNC Plaza
301 Fayetteville Street, 15th Floor
Raleigh, North Carolina 27601
Attn.: _____

16. **Severability.** In the event any term, covenant or condition of this Agreement is deemed invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

17. **Assignment.** The right to receive any benefit under this Agreement shall belong solely to the Company and may not be transferred or alienated in any way, in whole or in part, to any other person or entity. Neither this Agreement, nor the right to payment under the terms of this Agreement, may be assigned by the Company or otherwise used as collateral for any obligations of the Company, financial or otherwise, without the express written consent of the County, which may be withheld at the County's sole and absolute discretion.

18. **Governing Law; Venue.** The execution, interpretation and performance of this Agreement shall in all respects be controlled and governed by the laws of the State of North Carolina. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the Superior Court of Chatham County. Each party consents to the sole and proper jurisdiction of such court in any such civil action or legal proceeding and irrevocably waives, to the fullest extent permitted by law, any objection to the laying of venue of any such civil action or legal proceeding in such court.

19. **Force Majeure.** Any delay in the performance of any of the duties or obligations of the Company hereunder shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of fire, earthquake, hurricane, flood, riot, civil commotion, terrorist act, terrorist threat, storm, washout, wind, lightning, landslide, explosion, epidemic, inability to obtain materials or supplies, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities or war, a labor dispute which results in a strike or work stoppage affecting the Facility (each such event, an "**Event of Force Majeure**"). The Company shall give prompt notice to the County of such cause and shall take whatever reasonable steps are necessary to relieve the effect of such cause as rapidly as possible.

20. **Binding Effect.** Subject to the specific provision of this Agreement, the provisions hereof shall inure to the benefit of and bind the parties hereto and their respective successors and assigns should the County elect to consent to an assignment. This Agreement shall be considered to have been prepared equally by the parties hereto and shall not be construed more strictly against either of them. The provisions hereof shall be liberally construed to give effect to their apparent intent.

21. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties hereto and may not be modified or canceled except pursuant to the terms hereof or an instrument in writing signed by the parties hereto.

22. **Counterparts.** This Agreement may be signed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute one and the same instrument. This Agreement is intended to benefit the parties hereto only, and therefore no third party shall have any rights under this Agreement, or be deemed a third party beneficiary.

23. **Liability of Officers and Agents.** No officer, agent, or employee of the County or the Company shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities.

24. **Recitals Incorporated.** The recitals set forth on the first, second, and third pages hereof are incorporated into and made expressly a part of this Agreement.

[The signature page follows.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in their corporate names by their duly authorized officers as of the date and year above first written.

ATTEST (THE COUNTY):

CHATHAM COUNTY

(County Seal)

Name: _____
Title: Chatham County Clerk

By: _____
Name: Dan LaMontagne
Title: Interim County

GILERO, LCC dba EG-GILERO

By: _____
Name: _____
Title: _____

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Vicki McConnell, Finance Director

NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, do hereby certify that Lindsay K. Ray personally appeared before me this day and acknowledged that she is the County Clerk of Chatham County and that by authority duly given and as the act of Chatham County, the foregoing instrument was signed in its name by Interim County Manager, Dan LaMontagne, sealed with its County seal, and attested by herself as its County Clerk.

Witness my hand and official seal this ____ day of _____, 2019.

Notary Public

Printed Name: _____

(Affix Notary Seal)
My Commission Expires: _____

STATE OF _____
COUNTY OF _____

I, _____, Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that he/she is the _____ of Gilero, LLC dba EG-Gilero, a North Carolina Limited Liability Company, and that by authority duly given and as the act of the said company, the foregoing instrument was signed in its name by _____, its _____.

Witness my hand and official seal this ____ day of _____, 2019.

Notary Public

Printed Name: _____

(Affix Notary Seal)

My Commission Expires: _____